

REMARKS

Introduction

Claims 1-20 were originally pending in this application. Claims 1, 7, 9, 10-12 and 16-18 have been amended. Claims 4 and 13 have been cancelled. Claims 19 and 20 have been withdrawn from consideration by the Examiner pursuant to 37 CFR 1.142(b). Thus, claims 1 - 3, 5 - 12 and 14 - 18 remain in this application.

Amendments to the Specification

Paragraph [0018] of the specification has been amended to correct a minor typographical error and paragraph [0024] has been amended for clarity. No new matter has been added.

Claim Objections

Claims 9 and 18 were objected to on the basis of certain informalities related to the expression “said seal” in line 2 of both claims. Claims 9 and 18 have been amended to correct the alleged informalities by inserting “second” before seal as suggested by the Examiner.

Claim Rejections

35 U.S.C. §102(b) – Anticipation

Claims 1-18 were rejected under 35 U.S.C. § 102(b) as being anticipated by the Whitehead et al. ‘640 patent. A claim is said to be anticipated where each and every limitation of the claim can be found in a single reference. Independent claims 1 and 10 have been amended to include the limitations formerly set forth in claims 4 and 13, respectively. In view of the amendments as explained in greater detail below, applicants respectfully submit that each and every limitation of independent claims 1 and 10 cannot be found in the reference of record in this

case. Claims 2 – 9 and 11-18 are all ultimately dependent on these independent claims and add further perfecting limitations. Accordingly, this rejection is respectfully traversed.

35 U.S.C. §103(a) – Obviousness

Claims 1-18 were also rejected on the alternative basis as being obvious, and therefore unpatentable, over the Whitehead et al. ‘640 patent. As noted above, independent claims 1 and 10 have been amended to include the limitations formerly set forth in claims 4 and 13, respectively. In view of these amendments, applicants cannot agree that the invention defined in claims 1 and 10 would have been obvious in view of the Whitehead et al. ‘640 patent. Accordingly, this rejection is respectfully traversed

The Prior Art

The Whitehead et al. ‘640 Patent

The Whitehead et al. ‘640 patent discloses a door trim panel assembly and method of making the same. Specifically, the ‘640 patent teaches a door trim panel assembly 10 including a carrier 20 made of plastic material and having a first side 21 and a second side 22. The second side 22 is attached to the inner panel 16 of the door 12. The door trim panel assembly 10 further includes a seal 24 molded as part of the second side 22 of the carrier 20 by the plastic material of the carrier 20. (Column 3, lines 22-24). Specifically, the seal 24 and the carrier 20 are formed as one piece. Furthermore, the seal 24 surrounds the entire perimeter of the inner panel 16 of the door 12. Importantly, the Whitehead et al. door trim panel assembly 10 further includes a finished door trim panel 34 that is attached to the carrier 20 by molding the carrier 20 to the door trim panel, thereby conforming the carrier 20 to the shape of the door trim panel 34. (Column 3,

lines 35-55). The Whitehead et al. '640 patent discloses another embodiment including a trim panel 134, a carrier 120 and a seal 124 molded as part of the second side 122 of the carrier 120, but where the seal 124 includes a seal retainer having a groove 138 in which a sealing member 142 is directly applied. The type of trim panel assembly 10 or 110 disclosed by the Whitehead et al. '640 patent is conventional and consists of a combination of a separate trim panel presenting a class-A side and a carrier. Thus, this trim panel assembly is well known in the art and was distinguished from the present invention in the background section of this patent application.

However, the Whitehead et al. '640 patent does not disclose or suggest *a single substrate* that includes both an A-side surface visible from the interior of a vehicle and a B-side surface to which at least one seal is bonded to prevent the entry of moisture between the B-side and the vehicle door, as required by independent claims 1 and 10.

The Present Invention

In contrast to that which is disclosed in the references of record in this case, the present invention as defined in independent claim 1 is directed toward a modular door trim panel assembly including a molded substrate having a first side defining an A-side surface that is visible from the interior of an automotive vehicle and a second side opposite the first side. The second side defines a B-side surface adjacent a vehicle door and includes a pair of side terminal edges and a lower terminal edge extending therebetween. The assembly further includes at least one seal that is co-molded while the substrate is formed and bonded to the B-side of the substrate. The seal extends substantially parallel to the pair of side terminal edges and the lower terminal edge of the substrate and is adapted to prevent the entry of moisture between the B-side of the substrate and the vehicle door. The seal is made of a polymer material suitable for use

within an injection mold that maintains a flexible quality when cured. In addition, the present invention as defined in independent claim 10 is directed toward the modular door trim panel assembly as described above where door frame is also included.

Argument

Applicants respectfully submit that the door trim panel assembly defined in independent claims 1 and 10 is not disclosed or suggested by the Whitehead et al. ‘640 patent. More specifically, the Whitehead et al. ‘640 patent does not disclose or suggest a door trim panel assembly including a single substrate having an A-side surface and a B-side surface and at least one seal, where the A-side surface is visible from the interior of an automotive vehicle and where the B-side surface receives the seal to prevent the entry of moisture between the B-side of the substrate and the vehicle door. Furthermore, Whitehead et al. does not teach that the seal is co-molded while the door trim panel is formed and bonded to the B-side surface. Finally, there is nothing in the teachings of the Whitehead et al. ‘640 patent that the seal is made of a polymer material suitable for use within an injection mold that maintains a flexible quality when cured, as required in independent claims 1 and 10.

Applicants respectfully submit that the structure required by newly amended independent claims 1 and 10 as discussed above cannot be found in the Whitehead et al. ‘640 patent, notwithstanding the Examiner’s attempt to find this structure in Figures 1 and 2. By way of example, the Whitehead et al. ‘640 patent discloses two separate substrates: (1) a door trim panel (34)(134) and (2) a carrier (20)(120). In addition to these separate components, a seal (24)(142) is applied to the carrier (20)(120) after the panel (34)(134) is formed. This structure, while well known in the art, is distinct from the present invention which is directed to a door trim panel

assembly having a single substrate with both A and B side surfaces. For these reasons, the applicants respectfully submit that the rejection under §102 should be withdrawn.

On the other hand, a rejection based on §103 must rest on a factual basis, with the facts being interpreted without a hindsight reconstruction of the invention from the prior art. Here, it is respectfully submitted that the Whitehead et al. reference skirts around, but does not suggest the claimed invention *as a whole*. See Hybritech Inc. v. Monoclonal Antibodies, Inc., 802 F.2d 1367, 1383 (Fed. Cir. 1986). In fact, the Whitehead et al. door trim panel assembly is structurally different from the present invention as defined in independent claims 1 and 10. Thus, it is respectfully submitted that the Examiner is picking and choosing elements from the structurally dissimilar device that is disclosed in the Whitehead et al. ‘640 reference, adding other elements that are missing from the disclosure and restructuring the Whitehead et al. door trim panel assembly, using hindsight and the applicants’ own disclosure, to conclude that the claimed invention is obvious. This is improper. There is a fundamental axiom in patent law that if a reference must be reconstructed or rearranged to change its operation to meet the applicants’ claim, that modification of the reference is inappropriate and cannot stand.

There is simply no motivation provided in the Whitehead et al. reference to provide a door trim panel assembly that employs a single substrate having an A-side surface visible from the interior of an automotive vehicle and a B-side surface adjacent the vehicle door. Similarly, there is no suggestion provided in the Whitehead et al. ‘640 patent to employ at least one seal that is co-molded while the door trim panel is formed and bonded to the B-side surface to prevent the entry of moisture between the B-side of the door trim panel and the vehicle door. Furthermore, even assuming that such a motivation existed, this reconstruction of Whitehead et

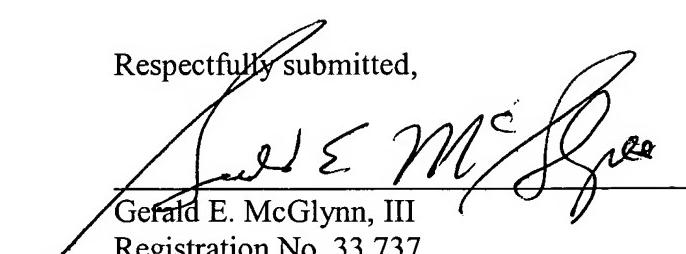
al. components would not result in a door trim panel assembly of the type described in independent claims 1 and 10.

In view of the above, it is respectfully submitted that independent claims 1 and 10 recite structure that is not disclosed or suggested by the prior art and is patentably distinguishable from the subject matter of the reference discussed above. Claims 2 – 9 and 11-18 are all ultimately dependent upon independent claims 1 and 10, respectfully, and add further perfecting limitations. As such, the prior art reference does not suggest the subject invention. However, even if it did, it could only be applied through hindsight after restructuring the disclosure of the prior art in view of applicants' invention. A rearrangement of the door trim panel assembly described in this reference to derive applicants' invention would, in and of itself, be an invention.

Conclusion

In view of the above, applicants respectfully submit that the claims, as amended, clearly distinguish over the prior art and are therefore allowable. Accordingly, applicants respectfully solicit the allowance of the claims pending in this case.

Respectfully submitted,



Gerald E. McGlynn, III
Registration No. 33,737
BLISS McGLYNN, P.C.
2075 W. Big Beaver, Suite 600
Troy, MI 48084
Phone: (248) 649-6090
Fax: (248) 649-6299
Email: gemcglynn@ipdirection.com

Date: November 10, 2004
Docket No.: 04224(3883.00032)